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In the
Supreme Court of the United States

OCTOBER TERM, 1961

No. **705**

GENERAL FINANCE CORPORATION,
APPELLANT,

v.

AUGUST ARCHETTO,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellant, General Finance Corporation, appeals from the decision of the Supreme Court of the State of Rhode Island and Providence Plantations, entered on 13 December, 1961, overruling the appellant's exceptions to the decision of the Superior Court of that State, and remanding the case to that court for entry of judgment in favor of appellee, Archetto. Appellant submits this statement to show that the Supreme Court of the United States has jurisdic-

tion of the appeal and that substantial questions are presented.

Opinion Below

The opinion of the Rhode Island Supreme Court is attached hereto as Appendix C.

Jurisdiction

Appellant, General Finance Corporation, brought suit against Appellee, August Archetto, a city tax assessor, under the provisions of Rhode Island General Laws, 1956, 44-5-26 praying for relief from assessment of taxes by the City of Cranston, Rhode Island. It claimed that certain entities were exempt from taxation by virtue of several Rhode Island statutes and aforesaid statutes were in derogation of state and federal constitutions. That being so, the appellant was allegedly overtaxed in the amount of $30.42. The petition for relief from assessment is set forth in Appendix A. The appropriate exemption statutes and constitutional provisions are set forth therein. Additional statutes adverted to in said petition appear in Appendix B hereto.

In essence, the Rhode Island Supreme Court held that the exemption statutes, as set forth in the petition for relief from assessment, were not repugnant to Article XIV, Section One of the Amendments to the United States Constitution which includes the inhibitions contained in Article I of aforesaid amendments, the separation of church and state clause. The Rhode Island Supreme Court remand order was entered 13 December, 1961, and appellant filed his notice of appeal on that date. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28, United States Code, Sec. 1257(2).

Questions Presented

1. Whether the tax exemptions granted to church properties by Rhode Island G.L. 1956, 43-3-3 (5), (6), and (7) constitute an "establishment of religion" by the state thus violating the First amendment as incorporated in the Fourteenth amendment of the United States Constitution, and

2. Whether certain exemptions granted to veterans, veterans' organizations, gold star parents, Brown University professors, and cemeteries by Rhode Island G.L. 1956, 44-3-3 (9), (11), and (13) and 44-3-4 and 44-3-5, deprive appellant of property in violation of the equal protection and due process clauses of the 14th amendment by increasing its tax liability without serving a lawful public purpose?

Statutes Involved

The appropriate statutes are set verbatim in Appendices A and B hereto.

Statement of the Case

General Finance Corporation owns rateable property in the city of Cranston, R.I. During the year 1959, the city council thereof ordered the tax assessor to assess taxes on all assessable property to obtain a total levy of not more than $7,151,000 as of 31 December 1958. The tax assessor did so, assessing a tax of $842 as to the appellant and honoring statutory exemptions of church properties, gold star parents, veterans, cemeteries, and Brown University professors. If these exempt entities had been taxed, the appellant's taxes would have been approximately $30 less. Appellant filed a petition for relief against the assessment in the Providence county superior court under the provisions of General Laws 1956, 44-5-26, praying that said exemption statutes be declared violative of the due

process, equal protection, and separation of church and state clauses of both the state and federal constitutions. That court held the statutes constitutional. Appellant appealed to the Rhode Island supreme court which upheld the superior court. It held that the aforesaid exemptions subserved a public purpose and did not violate the separation of church and state. It further held that granting of exemptions was within the exclusive power of the general assembly and it was not the function of the court to question the wisdom thereof.

The Questions Are Substantial

1. As stated in the opinion of the Rhode Island Supreme court, it cannot be doubted that tax exemptions to church properties used for religious purposes are universal. Pfeffer, Church, State, and Freedom, p. 184. As further stated in the opinion, when the colonies proclaimed their independence and drafted their several constitutions, they intended to continue, in general, the powers theretofor exercised by their legislative bodies. But the Rhode Island court failed to appreciate that our declarations of independence and the subsequently adopted state and federal constitutions represented a reaction not only to British tyranny, but to obnoxious colonial practises, whether committed in the name of the crown or in the name of the colonial legislatures. Principal of the colonial extravagances to which objections were rife was the compulsory tax support of religion. Roger Williams and Thomas Hooker, to name only two, fled or were banished from the colony of Massachusetts Bay in order to obtain freedom of religion in Rhode Island and Connecticut respectively. It is highly doubtful that the citizens of Rhode Island in 1852 intended to recreate the objectionable conditions by reason of which the state was founded by their adoption of its present constitution.

It may be argued that an exemption does not constitute compulsory tax support of religion. But an exemption is an outright grant by another name. *Eyers Woolen Co.* v. *Gilsum*, 84 NH 1, 146 A 511, 64 ALR 1196. This being so, the First amendment, applicable to the states via the Fourteenth, as interpreted by the *Everson*, *McCollum*, and *Zorach* cases [330 US 1, 333 US 203, 343 US 306] is absolutely breached.

General Finance Corporation, being an incorporeal entity, cannot have a religion. Notwithstanding the small amount of its enforced contribution, it is cumulatively substantial. It should not be compelled to pay to support a theory in which it does not, and cannot, believe. See *Int. Assoc. of Machinists* v. *Street*, 367 US 740.

2. Appellant fails to appreciate what public purpose is subserved by granting exemptions to cemeteries, both public and proprietary, to Brown University professors, and to veterans, their organizations, much of whose activity is lobbying unfavored by federal tax statutes, and to the parents of those who died in service. A bounty to induce enlistment is one thing. *Abbe* v. *Allen*, 39 How. Prac. (N.Y.) 488. But a reward in the form of a bonus or pension is another. *People* v. *Westchester National Bank*, 231 NY 465, 132 NE 241, 15 ALR 1344. During war or national emergency, able bodied citizens and aliens who have applied for citizenship are under an obligation to serve in the armed services of their county. 6 CJS 350. Consequently, bounties to induce enlistments or rewards for past service in the armed forces are mere gratuities and do not subserve any public purpose.

Washington County v. *Berwick*, 56 Pa. 466 (1867).

Breaknock School District v. *Frauhouser*, 56 Pa. 380 (1868).

Head v. *Acton*, 139 Mass. 341, 1 NE 413, (1885).

Bush v. *Orange County*, 159 NY 212, 45 LRA 556, 53 NE 1121 (1899).

Opinion of the Justices, 186 Mass. 603, 72 NE 95 (1905).

Opinion of the Justices, 190 Mass. 611, 77 NE 820 (1906).

Beach v. *Bradstreet*, 85 Conn. 344 82 A 1030 (1912).

Mackay v. *Reeves*, 42 SD 341, 175 NW 359 (1919).

People v. *Westchester Bank*, 231 NY 465, 132 NE 241, 15 ALR 1344.

Kingman v. *Brockton*, 153 Mass. 255, 26 NE 998 (1891).

Marallis v. *Chicago*, 349 Ill. 422, 182 NE 394, 83 ALR 1222 (1932).

State v. *Shedroi*, 75 Vt. 277, 54 A 1081, 63 LRA 179.

Appellant contends that similar exemptions to cemeteries and Brown University professors likewise subserve no public purpose and constitute the taking of appellants money for private purposes, thereby depriving it of property without due process of law and infringing on its right to the equal protection of the laws.

Appellant submits that the questions presented are substantial and that it is of such public importance that the issue should be resolved by this Court.

Respectfully submitted,

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Attorneys for Appellant

Appendix A

M. P. No. 4941

State of Rhode Island — Superior Court
Providence, ss

GENERAL FINANCE CORPORATION

v.

AUGUST ARCHETTO

PETITION FOR RELIEF FROM ASSESSMENT

General Finance Corporation, a corporation duly organized and incorporated under the laws of the State of Rhode Island, represents to this Court as follows:

1. Your petitioner is the owner of real estate in the City of Cranston, Rhode Island, described by the tax assessor thereof as Plat No. 10, Lot No. 1133, and Plat No. 4, Lot No. 3315, and fully delineated on charts in his office in City Hall, Cranston, Rhode Island.

2. Respondent August Archetto is the tax assessor of the City of Cranston, Rhode Island, having been elected as such at the inaugural meeting of the City Council thereof in January 1959.

3. By virtue of Ordinance No. 87, enacted by the City Council of the City of Cranston on 27 April 1959, aforesaid tax assessor was ordered to levy a total of not less than $6,850,000.00, and not more than $7,151,000.00, on all rateable, tangible and intangible property located within said City, as of 31 December 1958, at such a rate per $1000. of declared or assessed tangible property, and at the rate of $4.00 per thousand on intangible personal property, so as to achieve a lawful total levy.

4. Pursant to the aforesaid ordinance, respondent tax assessor prepared a list of individuals to be taxed, assessed valuations on rateable property and assessed taxes thereon to the total of $6,943,528.68. Included within this total re-

spondent assessed your petitioner of a total tax of $842.52 upon real estate assessed by him at a value of $24,780.00.

5. The total gross property within said City was assessed at a valuation of $281,058,920.00 by respondent assessor. The total exempt property, as valued by respondent assessor was $53,071,100.00, making a total net tax base of $227,987,820,00.

6. By virtue of the General Laws of Rhode Island, 1956, certain property is exempt from taxation. The statutes granting the exemptions read as follows:

44-3-3. Property exempt.—The following property shall be exempt from taxation:

"(5) buildings for free public schools, buildings for religious worship and the land upon which they stand and immediately surrounding the same, to an extent not exceeding one (1) acre, so far as said buildings and land are occupied and used exclusively for religious or educational purposes;"

"(6) dwelling houses and the land on which they stand, not exceeding one (1) acre in size, owned by or held in trust for any religious organization and actually used by its officiating clergymen, to an amount not exceeding ten thousand dollars ($10,000) for each such house and land so owned and used;"

"(7) the intangible personal property owned by, or held in trust for, any religious organization, if the principal or income shall be used or appropriated for religious or charitable purposes;:"

"(9) the estates, persons and families of the president and professors for the time being of Brown University for not more than ten thousand dollars ($10,000) for each such officer, his estate, person, and family included;"

"(11) lots of land used exclusively for burial grounds;"

"(13) the real or personal estate belonging to or held in trust for the benefit of incorporated organizations of vet-

erans of any war in which the United States has been engaged, the parent body of which has been incorporated by act of Congress, to the extent of one hundred thousand dollars ($100,000), if actually used and occupied by such association;:"

44-3-4. Veterans' exemptions.—"The property of each person who served in the military or naval service of the United States in the war of the rebellion, the Spanish-American war, the insurrection in the Phillippines, the China-relief expedition, or World War I, and the property of each person who served in the military or naval service of the United States in World War II at any time during the period beginning December 7, 1941, and ending on September 2, 1945, and who was honorably discharged therefrom, or who was discharged therefrom under conditions other than dishonorable, or who, if not discharged, served honorably, or of the unmarried widow of such person shall be exempted from taxation to the amount of one thousand dollars ($1,000). . . ."

44-3-5. Gold Star parents' exemption.—"The property of every person whose son or daughter has served with the armed forces of the United States of America in any of the wars in which the United States has been engaged as defined in 44-3-4 and has lost his or her life as a casualty of any of such wars, shall be exempted from taxation to the amount of one thousand five hundred dollars ($1,500) in accordance with similar provisions of 44-3-4 applying to honorably discharged veterans of the armed forces; provided, however, that there shall be but one (1) exemption granted where both parents of the deceased son or daughter are living."

7. Pursuant to the aforesaid statutes the respondent assessor of taxes exempted the following valuations of rateable property:

Churches	$2,891,800.00
Professors of Brown University	8,860.00
Cemeteries	690,080.00
Veterans, Gold star mothers, etc.	6,535,760.00
Total of above exemptions	$10,143,120.00

Ratio of exempt assessed valuations to total gross property: 3.61%

8. General Laws 1956, 44-3-3 (5), (6), (7), (9), (11), (13), 44-3-4, and 44-3-5, are in derogation of the following constitutional provisions:

> Art. I, R. I. Const. Sec. 2: "All free governments are instituted for the protection, safety and happiness of the people." All laws, therefore should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. Art. I, R. I. Const. Sec. 16: "Private property shall not be taken for public uses without just compensation."
>
> Art. XIV Amendments U. S. Const., Sec. 1: "Nor shall any state deprive any person of. . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In that the exemption from taxation of the aforesaid persons or properties do not subserve a public purpose, but in fact and in law create in equality in the sharing of the burdens of government.

9. G. L. 1956, 44-3-3, (5), (6), (7) are in derogation of the following constitutional provisions:

> Art. I, R. I. Const. Sec. 3: ". . . .no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of his own voluntary contract; nor enforced, restrained, molested, or burdened in his body or goods; . . . ."
>
> Amendment I, U. S. Const.: "Congress shall make

no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . .'' as made applicable to the States by the 14th amendment, supra.

In that the aforesaid exemptions from taxation are tantamount to an outright grant by the State in support of religion which must be shared by the whole of the taxpaying public without voluntary contract.

10. The exemptions from taxation as allowed by respondent tax assessor, or a large portion thereof, have been allowed without specific claim therefor by the entities to which exemptions have been granted.

11. If respondent tax assessor had assessed taxes on the entities he exempted your petitioners' tax, as assessed, would be less by $30.42.

12. If the entities exempted from taxation were actually assessed taxes, notwithstanding the exemption statutes, supra, the total levy would exceed that authorized by ordinance #87 and therefore the taxes assessed to your petitioner would be void.

13. The last date within which the assessed taxes may be paid without interest in Cranston, Rhode Island is 16 November 1959.

14. The taxes assessed to your petitioner by respondent assessor are illegal in part, by reason of the premises.

Wherefore, your petitioner, General Finance Corporation, prays that this Superior Court grant it relief from such assessment in accordance with G.L. 1956, 44-5-31 and that citation issue to respondent August Archetto, summoning him to appear in Court on a date certain and to show cause why relief should not be granted, in accordance with G. L. 56, 44-5-26.

General Finance Corporation
By its attorney,
(s) Aram K. Berberian
Aram K. Berberian

Appendix B

APPLICABLE STATUTES

G.L. 1956, 44-5-26. Petition in superior court for relief from assessment. Any person aggrieved on any ground whatsoever by any assessment of taxes against him in any city or town, may within three months after the last day appointed for the payment without penalty of such tax, or the first instalment thereof, if such tax be payable in instalments, file a petition in the superior court for the county in which such city or town lies for relief from such assession, to which petition the assessors of taxes of said city or town in office at the time such petition is filed be made parties respondent, and the clerk shall thereupon issue a citation substantially in the following form: (Form omitted)

Provided, however, that in case such person has not filed an account, he shall not have the benefit of the remedy provided in this section. . . . unless. . . . the tax assessed is illegal in whole or in part; and his remedy shall be limited . . . . to relief with respect to such illegal tax. . . .

G.L. 1956, 44-5-31. Judgment where taxpayer has not filed account. If the tax payer has not filed an account, and if on the trial of said petition, either with or without a jury, it shall appear. . . . that the tax assess is illegal in whole or in part, the court shall give judgment that the sum by which the taxpayer has been. . . . illegally taxed, with his costs, be deducted from his tax, but if the taxpayer's tax be paid whether before or after the filing of said petition, then the court shall give judgment for the petitioner for the sum by which he has been. . . . illegally taxed, plus the amount of any penalty paid thereon, with interest from the date on which said tax and penalty were paid, and costs, which judgment shall be paid to the petitioner by the town treasurer out of the treasury. Otherwise

the assessors shall have judgment and execution for their costs.

G.L. 1956, 44-3-3 (5), (6), (7), (9), (11), and (13), G.L. 1956, 44-3-4, and G.L. 1956, 44-3-5, the statutes authorizing the exemptions which this appeal challenges, are set forth verbatim in the appellant's petition for relief from assessment. See Appendix A, pp. 8 & 9.

Appendix C

Ex. & e. No. 10,308.

Supreme Court

GENERAL FINANCE CORPORATION

v.

AUGUST ARCHETTO, Tax Assessor.

OPINION

POWERS, J. This is a petition for relief from assessment brought by a taxpayer of the city of Cranston against the respondent in his capacity as tax assessor, as authorized by G. L. 1956, §44-5-26. It was heard by a superior court justice, sitting without a jury, and resulted in a decision for the respondent. The case is before us on the petitioner's bill of exceptions, the sole exception being to the decision.

None of the facts is in dispute. The gravamen of the petition is that respondent by giving effect to certain tax exemption statutes, which it is argued are in violation of the state and federal constitutions, applied a higher rate per $1,000 against the full and fair cash value of petitioner's property than would otherwise have been necessary to raise the sum of money authorized by a resolution of the city council.

It is established by the record that on April 27, 1959, the city council by resolution ordered respondent "to levy a total of not less than $6,850,000.00, and not more than $7,151,000.00, on all rateable, tangible and intangible property located within said City, as of 31 December 1958, at such a rate per $1000. of declared or assessed tangible property, and at the rate of $4.00 per thousand on intangible personal property, so as to achieve a lawful total levy."

Accordingly respondent assessed all of the ratable property in said city at a total gross value of $281,058,920, which was reduced by $53,071,100 in exemptions authorized

by the statutes of the state. Against the resulting net assessment respondent levied a tax of $6,943,528.68. The petitioner's real estate was assessed at a value of $24,780, resulting in a tax bill of $842.52. It contends that if the total tax levy had been produced by resort to the total assessment and not to the assessment which credited certain exemptions, the rate of taxation would have been so reduced as to lessen petitioner's taxes by $30.42, for which amount it seeks relief.

The trial justice noted that the exemptions in the amount proved included those made pursuant to statutes, the validity of which were not in dispute, thus reducing the amount of relief to which petitioner would be entitled if it prevailed. In the view we take, however, the discrepency is academic. After noting the discrepancy the trial justice then considered petitioner's contentions that the exemption statutes in issue are unconstitutional, and finding them without merit entered decision for respondent.

Stated concisely for purposes of condensation the exemptions allegedly invalid are as follows:

> General Laws 1956, §44-3-3. Buildings for religious purposes and the land on which they stand, not exceeding one acre, to the extent such buildings and land are used for religious or educational purposes; $10,000 in value of the land and buildings actually used as rectories, parsonages and the like, but not exceeding one acre; intangible personalty held in trust for religious organizations, if used for religious or charitable purposes; estates of the president, officers and professors of Brown University to the amount of $10,000 in any one estate; lots of land used exclusively for burial grounds; and the real or personal estate held in trust or belonging to incorporated veteran organizations, with limitations, and provided the parent body was chartered by the congress of the United States.

Section 44-3-4. Veterans of the several wars involving the United States and the widows of such veterans, so long as they should remain unmarried.

Section 44-3-5. Parents of those men and women who lost their lives in the military service of the country, as such service is defined in the provision relating to veterans' exemptions.

The petitioner contends that all such exemptions of persons or property do not subserve a public purpose, but rather create in fact and in law inequality in the sharing of the burdens of government, which it argues is in derogation of art. I, §§2 and 16, of the Rhode Island constitution, and art. XIV, §1, of amendments to the United States constitution.

Article I, §2, of the Rhode Island constitution reads as follows:

> "Laws for good of whole—Distribution of burdens of state.—All free governments are instituted for the protection, safety and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens."

Section 16 of said article provides:

> "Compensation for private property.—Private property shall not be taken for public uses, without just compensation."

It is elementary that the taxing power is vested exclusively in the legislature and equally elementary that the granting of exemptions when not outrageously subversive is as thoroughly an attribute of sovereignty as is the imposition of the tax to which the exemption relates. Likewise it is not for this court to question the wisdom of the policy pursued by the general assembly when in the exercise of its exclusive power it enacted the exemptions which are the source of petitioner's grievances.

As early as 1856, this court had occasion to construe art. I, §2, in *In the Matter of Dorrance-Street*, 4 R. I. 230, wherein this court stated at page 249:

> "We will not stop to notice the very general language and declaratory form of this clause; setting forth principles of legislation rather than rules of constitutional law—addressed rather to the general assembly by way of advice and direction, than to the courts, by way of enforcing restraint upon the law-making power. We do not mean to say that a law, purporting to impose a tax or burden of some sort upon the citizen, may not be in its distribution of the burden, both in design and effect, so outrageously subversive of all the rules of fairness, as not to come so far within the purview of this general clause, as to enable the court to save the citizen from oppression by declaring it to be void. But evidently a wide discretion with regard to the distribution of the burdens of state amongst the citizens was intended to be reposed in the general assembly by the will of the people, as signified in this clause of the constitution. The form is 'ought to be,' the word is '*fairly*' distributed, not 'equally' even—unless equality be fair, which it is not always in any sense, and never is in some senses * * *."

In a line of subsequent decisions, notably *Brown University* v. *Granger*, 19 R. I. 704, and *Opinion of the Justices in re Metropolitan Park Loan*, 34 R. I. 191, this court adhered to the rule as enunciated in *In the Matter of Dorrance-Street*, *supra*, without suggestion of qualification. More recently in the case of *Romano* v. *Daucker*, 77 R. I. 61, this court stated at page 65, referring to art. I, §2, "Moreover that section has been frequently held by this court to be advisory only and not a limitation upon the legislative power of the general assembly."

Nor are the exemptions in question in derogation of art.

I, §16. Again we refer to *In the Matter of Dorrance-Street, supra,* wherein at page 245 this court held, "The '*taking*' in the clause in question, is defined to be the actual seizing or direct taking of specific property for public use, as distinguished from incidental injury to it when not taken, on the one hand, or the levying of taxes in the form of money or labor, or even of specific goods, on the other, for the public service." See *Manning* v. *Board of Tax Comm'rs,* 46 R. I. 400.

Indeed in *Brown University* v. *Granger, supra,* this court passed upon and specifically upheld the validity of the Brown University exemptions and sweepingly declared at page 710: "But that it means that the General Assembly has no power to exempt any property whatever from taxation, or that property theretofore exempted by charter was to be affected thereby, is wholly unreasonable. The whole course of State legislation, from th adoption of the constitution to the present time, conclusively negatives any such intention." Speaking thusly, the court dismissed limitations on the power to exempt allegedly implied in art. I, §2, of our constitution.

The trial justice in reaching his decision commented on the general acceptance of tax exemptions, referring to the adoption by the people of art. XXX of amendments to the Rhode Island constitution which in effect credits veterans, their widows and Gold Star parents with payment of their exemptions, for the purposes of financial town meetings. He said:

> "There was thus written into the very constitution itself an acknowledgment of the validity of the exemptions which are here the subject of attack, thus making it clear that such exemptions are not to be deemed unconstitutional under other and previously adopted sections of the fundamental law. A more solemn affirmance of legality can hardly be imagined since con-

struction by the people in convention assembled, followed by adoption of an amendment by their vote, must clearly carry more weight with the courts than even long continued legislative construction which has been so recognized."

Likewise, tax exemptions have long been held not to violate the due process and equal protection clause of the federal constitution. *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495. Therein it is stated at page 509, "It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation." See also *Bell's Gap R.R.* v. *Pennsylvania*, 134 U. S. 232, 237, and *Lawrence* v. *State Tax Comm'n*, 286 U. S. 276, 284.

The petitioner further contends, however, that if the granting of exemptions is not prohibited as such by the constitutional provisions heretofore discussed, nevertheless any such exemptions to religious societies, organizations or corporations or of property held by them for religious purposes are specifically prohibited by art. I, §3, of the Rhode Island constitution and art. I of amendments to the United States constitution. The pertinent provision of our state constitution reads as follows: "* * * we, therefore, declare that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of his own voluntary contract, nor enforced, restrained, molested, or burdened in his body or goods * * *."

The petitioner argues that by relieving religious societies and organizations such as churches, schools, parsonages and the like from bearing their full share of the cost of government, its burden has been proportionately increased, thus in effect requiring it to support such religion in violation of the constitution.

In this state, exemptions to churches were common prior to as well as after the adoption of our constitution in 1842. Indeed in Pfeffer on Church, State and Freedom, at page 184, it is stated: "The universality of the exemption of church property from taxes in the United States is hardly open to doubt; constitutional or statutory provision for such exemption exists today in all states as well as in the District of Columbia. Churches, other houses of worship, and the land on which they stand are everywhere freed from tax levies, as is personal property devoted to religious uses."

Although no Rhode Island case has been called to our attention, nor have we independently discovered any where the constitutionality here in issue has been considered, we are not constrained to strike down the statutes in question in the absence of a showing that clearly and beyond a reasonable doubt they contravene art. I of the state constitution and art. I of amendments to the federal constitution. See *Romano* v. *Daneker, supra.* It is not without significance, we think, that exemptions such as those here assailed were quite common in this state when the people adopted their constitution in 1842, including the provisions of art. I, §3, as they now exist.

In art. IV, §10, it is provided, "The general assembly shall continue to exercise the powers they have heretofore exercised, unless prohibited in this Constitution." Query: Did the people intend by the adoptiong of art. I, §3, to prohibit to the legislature the authority to exempt religious societies, organizations and their property as had been its common practice? See 6 Acts & Resolves 74 (1769). We think not. Several states have specifically held that such exemptions are not in derogation of the religious freedom clauses of state and federal constitutions. *City & County of San Francisco* v. *McGovern*, 28 Cal. App. 491; *State* v. *Alabama Educational Foundation*, 231 Ala. 11; *Trustees*

of Griswold College v. *State of Iowa*, 46 Iowa 275. See *Gibbons* v. *District of Columbia*, 116 U. S. 404.

The petitioner, however, most vigorously contends that by reason of the decisions in *Everson* v. *Board of Education*, 330 U. S. 1, 65, and *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203, the supreme court of the United States has by clear implication placed these controversial statutes within the prohibition of art. I of amendments to the United States constitution. It is settled that the first amendment to the federal constitution was made applicable to the states by the adoption of art. XIV of amendments. *Murdock* v. *Pennsylvania*, 319 U.S. 105.

In the *Everson* decision the court, although sustaining the validity of a New Jersey statute which permitted reimbursement to the parents of Catholic children for the cost of bus transportation as was accorded to children attending public schools, stated at page 15: "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."

In conclusion the court at page 18 added, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here." Forceful language, but oddly in contrast with the net effect of the court's decision. Notwithstanding the decision, the language of the court was generally considered to cast doubt on the legality of varying legislative acts theretofore universally accepted as within the proper sphere of the legislative power.

Thereafter in *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203,, it was held that a state statute authorizing the use of public schoolhouses for religious instruction under a system whereby children were released

one hour each week from secular studies to attend religious instructions was in violation of art. I of amendments to the United States constitution. The court stated at page 210, "This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith."

The petitioner argues that whatever doubt may have existed in the wake of the *Everson* decision, the subsequent decision in *McCollum* clearly holds that the court intended to strike down state statutes granting aid of whatever nature and however incidental. The statutes here under assault, it insists, squarely fall within the broad sweep of the *McCollum* decision.

We do not so construe its import. Not without significance is the concluding phraseology at page 212: "The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. This is not separation of Church and State." In granting tax exemptions to religious organizations, however, it seems to us that the incidental benefit is not such as to constitute direct participation by state authorities in promotion of religious education, as the court indicated was the case on the facts peculiar to the *McCollum* decision.

Moreover, the sweeping implications of that case argued by petitioner appear to have been more closely confined by the decision in *Zorach* v. *Clauson*, 343 U.S. 306. There, as in the *McCollum* case, the court was concerned with the question of "released time," so called. A New York statute admittedly distinguishable on its facts was held not to violate the first amendment. Differentiating between the two cases, the court stated at page 314, "But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its

weight against efforts to widen the effective scope of religious influence."

In all three cases strong dissenting opinions were written which, when read together with the majority opinions, leave little doubt but that definitively the court has not attempted to generalize on the intendment of the first amendment made applicable to the states by the fourteenth article of amendments.

We are persuaded that the court has not gone so far as to hold that clearly and beyond a reasonable doubt the tax exemption statutes here in issue are in contravention of art. I of amendments to the federal constitution.

The opinion of the majority in *Illinois ex rel. McCollum v. Board of Education, supra,* on the facts appearing therein is the law of the land. But on the question of the validity of the tax exemption statutes before us, the language of that opinion does not help the petitioner here. On the other hand Mr. Justice Reed's statement in his dissenting opinion appeals to this court as both persuasive and cogent in meeting the petitioner's contention of the unconstitutionality of these tax exemption statutes. He says at page 256, "Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people."

The petitioner's exception is overruled, and the case is remitted to the superior court for entry of judgment on the decision.

SUPREME COURT, U. S.

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In the
Supreme Court of the United States

OCTOBER TERM, 1961

No. 705

GENERAL FINANCE CORPORATION,
APPELLANT,

v.

AUGUST ARCHETTO, TAX ASSESSOR,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

APPELLEE'S MOTION TO DISMISS AND MOTION TO AFFIRM

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Now comes the respondent-appellee, August Archetto, tax assessor, hereinafter referred to as the appellee, and, by counsel, respectfully moves that the appellant's appeal be dismissed or, in the alternative as hereinafter set forth, that the decision and decree of the Supreme Court of the

State of Rhode Island and Providence Plantations, from which the appellant appeals, be affirmed by this Honorable Court.

The appellee respectfully moves that the appellant's appeal from a decision of the Supreme Court of Rhode Island be dismissed on the following grounds:

1. The appeal fails to present any real federal question for review, the opinion of the Supreme Court of Rhode Island having been based on two conclusions: a) that the tax exemptions granted by the state legislature did not violate the state constitution and b) that the instant case did not present facts capable of raising the issue of whether the tax exemptions were violative of the cited provisions of the United States Constitution.

2. The appeal fails to present a substantial federal question for review; the language of the Supreme Court of Rhode Island on the issue of whether the First Amendment is in fact involved is as follows:

> "In granting tax exemptions to religious organizations, however, it seems to us that the incidental benefit is not such as to constitute direct participation by state authorities in promotion of religious education, as the [Supreme] court indicated was the case on the facts peculiar to the *McCollum* decision."

3. The appeal herein, while involving a question of violation of a state constitution, does not in fact present a federal question of any substance or merit.

4. Appellant's claim that the limited statutory tax exemption granted to a portion of church and other properties constitutes a violation of the First Amendment does not

raise a substantial issue of violation of the federal principles of separation of church and state.

5. Appellant's claim that granting tax exemptions, in limited amounts, to certain enumerated bodies unjustly resulted in a tax upon it which is some thirty dollars in excess of a tax made without granting exemptions does not present to this Court a substantial federal issue.

6. The decision of the Rhode Island Supreme Court is grounded on that court's determination that the exemptions do not violate the state constitution; and that court's references, *obiter dicta*, to the federal constitution do not, of themselves, create or present a substantial federal question.

7. The major thrust of appellant's argument, both in its original petition for relief before a justice of the lower court and in its brief to the state's high court, was that the exemptions granted by the state legislature were violative of the state constitution.

8. Appellant's initial pleading in the lower state court, the petition for relief from assessment, contained merely a prayer for relief from tax assessment, under the provisions of a state remedial statute (see Appendix A, appellant's jurisdictional statement, p. 11), and did not pray for a determination that the statutory tax exemption was violative of the federal constitution.

9. The decision of the Supreme Court of Rhode Island, in overruling appellant's exception to the decision of the lower court justice denying the petition for relief from assessment, was based upon adequate non-federal grounds and involved no federal question of substance.

Wherefore, the appellee respectfully moves that the appeal be dismissed or, in the alternative, that the decision of the Supreme Court of the State of Rhode Island and Providence Plantations be affirmed for the reason that the question sought to be reviewed by appellant is insubstantial.

Respectfully submitted,

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Providence County Courthouse
Providence, Rhode Island
Attorney for Appellee

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1961

No. 705

GENERAL FINANCE CORPORATION,
Appellant,

v.

AUGUST ARCHETTO, TAX ASSESSOR,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

APPELLANT'S MOTION FOR LEAVE TO FILE MULTILITH BRIEF

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

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IN THE
SUPREME COURT OF THE UNITED STATES
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AUGUST ARCHETTO, TAX ASSESSOR,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

APPELLANT'S MOTION FOR LEAVE TO FILE MULTILITH BRIEF

Appellant, General Finance Corporation, respectively moves that it be granted leave to file a multilith brief in opposition to Appellee's motion to dismiss and motion to affirm filed in this court on or about March 3, 1962. Appellant prays for leave to be excused from the requirements of Supreme Court Rule 39 (1).

By its Attorney,

PONTARELLI & BERBERIAN

ARAM K. BERBERIAN

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1961

No. 705

GENERAL FINANCE CORPORATION
Appellant,
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Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND MOTION TO AFFIRM

1. Appellee states in his paragraph No. 1 in his motion to dismiss that the Rhode Island Supreme Court concluded that the instant case did not present facts capable of raising the federal constitutional question. Notwithstanding Appellee's conclusion, the Rhode Island Supreme Court decided that the church-tax exemption did not in fact and in law violate Article I of the Amendments to the United States Constitution. See lower court's opinion page 23 in Appellant's Jurisdictional Statement.

2. Appellee's ground No. 6 in his motion to dismiss states that the lower court's reference to the federal constitutional question is ~~overta~~ Quinter dictum. Notwithstanding Appellee's averment to that effect, Appellant in its original petition alleged that the state exemption statutes were violative of Article XIV of the Amendments to the United States Constitution. See paragraph 8 in Appellant's Petition for Relief from Assessment filed in the Providence Country Superior Court, printed on page 10 of its Jurisdictional Statement. In answer thereto the

lower court stated in its opinion that violation of the federal constitution was one of the Appellant's contention in the Rhode Island courts. See opinion of the Rhode Island Supreme Court on page 16 of Appellant's Jurisdictional Statement.

3. Appellee states in ground No. 7 in his Motion to dismiss that the major thrust of the Appellant's argument was violation of the Rhode Island Constitution. Notwithstanding Appellee's statement to that effect Appellant's contentions in the Rhode Island state courts were that the tax exemption statute violated both federal and state constitutions.

4. Appellee in his ground No. 8 of his motion to dismiss avers that Appellant failed to request that the state tax exemption statutes be declared unconstitutional. In fact, Appellant averred in its petition to the Rhode Island Superior Court that the Rhode Island tax exemption statutes were in derrogation of both federal and state constitutions and by reason of such illegality it ought to be granted relief from assessment of taxation in accordance with the procedure therefore set forth by applicable Rhode Island statutes.

WHEREFORE, Appellant prays that Appellee's motion to dismiss be denied.

Respectfully submitted,

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